

Department of State

§ 72.39

§ 72.34 [Reserved]

§ 72.35 Procedure for inventorying and appraising effects.

After taking possession of the personal estate of a deceased citizen, the consular officer should immediately inventory and appraise the personal effects on the basis of the local market value, article by article, with the assistance of two other persons who should join him in signing the inventory and in certifying to the accuracy of the appraised value of each article inventoried. The inventory should include only that part of the personal estate actually taken into possession by the consular officer, regardless of value and the fact that the death may have occurred in one consular district and a portion of the personal effects may be found in another consular jurisdiction. Care should be exercised not to overestimate the value of the personal effects, which is the basis on which Foreign Service fees will be charged (§72.52). The consular officer may, in his discretion, call upon professional appraisers at the expense of the estate when warranted by the nature of the personal effects, i.e., expensive jewelry, furs, etc.

§ 72.36 Preparation and disposition of inventory.

The inventory of effects should be prepared in quintuplicate. All copies should be signed by the consular officer and the two persons who assisted in its preparation, and they should be disposed of in the following manner:

- (a) The original retained in the office files;
- (b) Two copies, under cover of a despatch, sent to the Department (one copy for transmission to the General Accounting Office);
- (c) One copy to the legal representative (two copies if the next of kin is the legal representative); and
- (d) One copy to the next of kin.

§ 72.37 Disposal of perishable property.

As soon as practicable after the consular officer takes possession, the perishable portion of the personal estate having commercial value (including most foodstuffs) should be sold at auc-

tion, i.e., to the most favorable bidder, unless the amount involved does not justify such expenditure. A newspaper advertisement, written or oral requests for bids from any interested party, or the services of a professional auctioneer, may all serve the purpose of insuring an impartial sale. When the value of the goods or circumstances do not justify such action, the consular officer may proceed directly with the sale of the goods.

§ 72.38 Collection of debts due deceased.

The consular officer should endeavor to collect only those debts due the decedent from persons or concerns in the country in which the death occurred or in the country in which the decedent was residing at the time of death. Debts so collected are regarded as part of the decedent's personal estate, and should be included in the gross amount thereof for the assessment of fees (§72.52).

§ 72.39 Payment of debts owed by deceased.

(a) *When cash resources suffice.* The decedent's debts which the consular officer is reasonably certain are legitimately owed in the country in which the death occurred, or in the country in which he was residing at the time of death, including expenses incident to the disposition of the remains and the personal effects, should be paid out of the cash resources of the personal estate taken into possession by the consular officer; namely, money found among the personal effects, proceeds of the sale of the perishable property, or funds received through the collection of debts owed the decedent. See §72.32 in regard to the personal estate in another consular district. Any doubtful claim against the estate should be referred to the legal representative or other authorized person for consideration; a claim for damages for a negligent or wrongful act of the decedent is not a debt to be paid by the consular officer unless it has been reduced to judgment.

(b) *When cash resources are insufficient.* In the event that the cash resources of the personal estate are not sufficient to pay the debts owing in the

§ 72.40

country in which the death occurred, or in the country in which the decedent was residing at the time of death, the consular officer should endeavor to obtain sufficient funds from the legal representative, next of kin or other interested person. See § 72.32 concerning funds found in another consular district. Fees are not charged on funds so furnished (§ 72.53). If sufficient funds cannot be assembled from the foregoing sources, the consular officer should sell at auction (see § 72.37), such portion of the personal estate as may be necessary to pay the debts and expenses. Should occasion arise for sale of motor vehicles, airplanes or powered watercraft, title to which and liens upon which in the United States and almost universally are matters of official record, care should be taken to conform with applicable registration requirements. Articles which are most marketable, and at the same time least likely to be desired by the heirs of the decedent, should be sold first. Jewelry, heirlooms and articles which may have sentimental value to relatives, regardless of intrinsic value, should be sold only in case of necessity, and in the order named. Members of the decedent's family should be notified of the necessity for the sale, if practicable, in order that they may purchase these articles if they desire. Proceeds from the sale are regarded as forming part of the personal estate and should be included in the gross amount thereof for the assessment of Foreign Service fees (see § 72.52).

§ 72.40 Consular officer not to act as administrator of estate.

The consular officer normally should not accept appointment from any foreign state or from a court in the United States to act as administrator, or to assist (except as provisional conservator) in administering the personal estate of a deceased citizen who has died, or was residing at the time of death, within his consular district. Neither should he accept appointment as guardian or in any other fiduciary capacity in the settlement of the estate without:

(a) Having previously obtained the permission of the Secretary of State to accept such appointment; and

22 CFR Ch. I (4–1–03 Edition)

(b) Having assured himself that he has authority so to act under treaty provisions, local law or usage.

If authorization is received as to appointment in any of the capacities indicated above, the consular officer will be required to execute bond, with surety to be approved by the Secretary of State (22 U.S.C. 1178, 1179).

§ 72.41 Consular officer not to perform legal services or to employ counsel.

Owing to the legal restriction against engaging in foreign business or professional activity (22 U.S.C. 805), the consular officer shall not act as attorney or agent for the estate. Neither shall he employ counsel at the expense of the United States Government, or the estate, in collecting and disposing of the personal estate of a deceased citizen. If legal assistance is requested of the consular officer, he may furnish the names of several attorneys or inform the inquirer as to sources through which the names of suitable attorneys may be obtained.

§ 72.42 Consular officer not to assume financial responsibility.

The consular officer, as provisional conservator of the personal estate of a deceased citizen, is neither authorized nor expected to assume any financial responsibility, not to incur any expense in behalf of the estate, in excess of funds available for that purpose (see § 72.39(a)).

§ 72.43 Conditions under which estate can be released by consular officer.

The consular officer is responsible to the United States court having probate jurisdiction over the estate and to the parties in interest for the personal estate in his possession. He must be prepared to deliver the estate to, or otherwise dispose of it according to the wishes of, the legal representative of the decedent upon the presentation of satisfactory evidence of the latter's right to receive the estate, and upon the payment of the prescribed Foreign Service fees (§ 72.52). Determination of what constitutes satisfactory evidence of a claimant's right to the personal estate of a deceased citizen is also the responsibility of the consular officer. The